



Australian Government

# Fair Work

## OMBUDSMAN

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### ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

Saltshaker Café and Restaurant Pty Ltd

(ABN 39165643774)

**Section 715 ENFORCEABLE UNDERTAKING**

**Parties**

1. This enforceable undertaking (Undertaking) is given to the Fair Work Ombudsman (FWO) by:
  - (a) Saltshaker Café and Restaurant Pty Ltd (the Employer)  
(ABN 39165643774)
  - (b) for the purposes of section 715 of the *Fair Work Act 2009* (FW Act).

**Background**

2. The Employer is the operator of the business known as Saltshaker Café and Restaurant.
3. Saltshaker Café and Restaurant (the Business) is a café and restaurant located at 11A Franklin Street Swansea Tasmania 7190.
4. In August 2015 the FWO commenced an investigation of the Business following the receipt of Requests for Assistance from a number of former employees of Saltshaker Café and Restaurant, listed in Attachment A (the Employees).
5. The Employees were employed by the Employer between 1st November 2014 to 20th August 2015 (the Investigation Period).
6. The Employees were employed under the classifications listed in Attachment A.
7. The terms and conditions of the Employees' employment were governed by the *Restaurant Industry Award 2010* (the Award) and the FW Act.
8. As a result of the investigation, the FWO determined that the Employer had contravened provisions of the FW Act and the Award by failing to pay the minimum entitlements as required by the Award. The contraventions resulted in the Employees being underpaid a total of \$20242.97 during the Investigation Period. The Employer has agreed to rectify the underpayment.

**Contraventions**

9. The FWO has determined, and the Employer admits, that they contravened section 45 of the FW Act by failing to comply with the following provisions of the Award:
  - (a) Clause 34.1 by failing to pay Penalty Rates on Saturday
  - (b) Clause 34.1 by failing to pay Penalty rates on Sunday
  - (c) Clause 34.1 by failing to pay Penalty rates on Public Holidays
  - (d) Clauses 13.1 and 34.1 by failing to pay correct Casual loading
  - (e) Clause 33.2 (a) by failing to pay overtime rates Monday to Friday
  - (f) Clause 33.2 (b) by failing to pay Overtime rates Saturday
  - (g) Clause 33.2 (c) by failing to pay Overtime rates Sunday
  - (h) Clause 24.2 by failing to pay a Split Shift Allowance
  - (i) Clause 32.4 by failing to pay to pay meal break loading
  - (j) Clause 35.2 (b) by failing to pay Annual Leave loading

- (k) Clause 31.2 (a) by failing to provide Full Time employees with a minimum of 6 hours per engagement
- (l) Clause 31.1 by failing to provide full time hours to full time employees

### **Commencement of Undertaking**

10. This Undertaking comes into effect when:

- (a) the Undertaking is executed by the Employer; and
- (b) the FWO accepts the Undertaking so executed.

Upon the commencement of this Undertaking, the Employer undertakes to assume the obligations set out below.

### **Undertakings**

11. For the purposes of section 715 of the FW Act, Saltshaker Café and Restaurant Pty Ltd make the following undertakings:

#### **Rectify Underpayments**

- (a) The Employer undertakes to:
  - (i) pay the amount of \$20242.97 less taxation to the Employees (being the underpayment arising from the Contraventions) within 6 months of the Commencement Date of this Undertaking. Payments to be in accordance with the plan in Attachment B of this Undertaking.
  - (ii) Within 7 days from the end of each calendar month after the commencement date of this Undertaking, provide to FWO evidence of all the payments made to the Employees during the preceding month.
- (b) Where contacted by current or former employees not included in this Undertaking alleging that their lawful entitlements have not been met, or that their lawful entitlements have not been met after the Investigation Period, the Employer agrees to:
  - (i) notify the FWO within 7 days of receiving the allegation detailing the nature and content of the allegation;
  - (ii) within 28 days of receiving the allegation, take all reasonable steps to ascertain whether a contravention or contraventions of the FW Act has occurred, and where such contraventions are found, rectify those contraventions within 60 days after receipt of the allegation;
  - (iii) within 7 days of resolving the allegation, provide the FWO with evidence that any identified underpayments have been paid and evidence that other allegations identified have been resolved; and
  - (iv) should an allegation not be resolved, notify the FWO why the allegation could not be resolved within 28 days of receipt of the allegation.

#### **FWO My Account Registration**

- (c) The Employer undertakes to:
  - (i) within 7 days of the commencement date of this Undertaking, register with the FWO 'My Account' portal at [www.fairwork.gov.au](http://www.fairwork.gov.au) and complete the profile, minimum pay rates and Award options; and

- (ii) within 14 days of the commencement date of this Undertaking, provide to the FWO the 'My Account' registration number.
- (d) The Employer undertakes to:
- (i) within 7 days of the commencement date of this Undertaking:
    - i. subscribe to receive "general information" email alerts from the FWO relating to regarding the Award and Tasmania (alert subscription available at [www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates](http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates));
    - ii. subscribe to FWO's employer newsletter for the relevant State and industry (subscription available at <http://www.fairwork.gov.au/about-us/news-and-media-releases/newsletter>), selecting at least the following options:
      - a. pay updates;
      - b. award updates;
      - c. holiday entitlements;
      - d. working hours and breaks; and
      - e. annual leave / sick leave;
  - (ii) within 14 days of the commencement date of this Undertaking, provide to the FWO evidence of the above subscriptions, including advising the FWO of the email address used to register;

#### **Future Workplace Relations Compliance**

- (e) The Employer undertakes to:
- (i) ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the FW Act and the Award, in respect of the Business and any future businesses operated by the Louise Luck (whether as a sole trader, a director of a company or by way of any other business structure).
- (f) Provide the FWO, within 60 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with paragraph (e) above. Without limitation, such systems and processes relating to:
- (ii) Ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
  - (iii) Keeping accurate and complete records to ensure employees receive their correct wages and entitlements.

#### **Self-audits and Reporting**

- (g) The Employer undertakes to:
- (i) have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist, at their expense, audits (**Audits**) of compliance with applicable Commonwealth workplace laws and instruments, including but not limited to the FW Act and the Award, in respect of pay rates, conditions, payslips and record keeping in relation to all of employees of the Business during the relevant audit period, according to the following schedule:
    - i. an Audit of the first complete pay cycle following 1 January 2017, which is to be finalised by 20 February 2017;

- ii. an Audit of the first complete pay cycle following 1 July 2017, which is to be finalised by 20 August 2017;
- (ii) without limiting paragraph 11(g)(i) above, ensure that each Audit examines the Employer's compliance with any wage rate, penalty or allowance increases flowing from the Fair Work Commission's Annual Wage Reviews;
- (iii) within 7 days of the Audit finalisation dates contained in paragraph 11(g)(i), provide the FWO with details of the methodology used to conduct the Audit and a copy of the certified audit report;
- (iv) upon request by FWO, provide within 7 days of receiving such request a copy of all documents provided to the auditor for the purpose of undertaking an Audit;
- (v) in the event that an Audit discloses contraventions of any applicable Commonwealth workplace laws or instruments, rectify all such contraventions within 14 days of receipt of the Audit results; and
- (vi) provide evidence of rectification of all contraventions disclosed by an Audit to the FWO within 14 days of rectification.

### **Workplace Notice**

- (h) The Employer undertakes to:
  - (i) within 28 days of the commencement date of this Undertaking, place a notice (**Workplace Notice**) within the premises operated by the Employer in a location which is accessible to all persons employed in the business Employer in the terms set out in Attachment C, such notice to remain in place for a total period of 7 consecutive days; and
  - (ii) provide a copy of the Workplace Notice and photographic or digital image as evidence of its display to the FWO within 7 days of the display of the notice.

### **No Inconsistent Statements**

12. Saltshaker Café and Restaurant Pty Ltd:

- a) must not; and
- b) must ensure that each of its officers, employees or agents, do not, make any statement, orally or in writing or otherwise imply anything that is inconsistent with admission or acknowledgements contained in this agreement.

### **Acknowledgements**


13. Saltshaker Café and Restaurant Pty Ltd acknowledge that:

- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its [website](http://www.fairwork.gov.au) at [www.fairwork.gov.au](http://www.fairwork.gov.au) (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
- (b) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
- (c) the FWO may issue a media release in relation to this Undertaking and from time to time, publicly refer to the Undertaking and its terms;
- (d) the admissions made in the Undertaking may be relied upon by the FWO in respect of any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth workplace relations obligations by Louise Luck or Saltshaker Café and Restaurant Pty Ltd;

- (e) consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out in this Undertaking;
- (f) if the FWO considers that the Employer has contravened any of the terms of this this Undertaking the FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act;
- (g) consistent with section 715(3) of the FW Act, the Employer may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.


**Executed as an Undertaking**

EXECUTED by Saltshaker Café and Restaurant Pty Ltd:

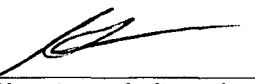
  
\_\_\_\_\_  
Louise Luck (Director)

18.10.2016  
\_\_\_\_\_  
(Date)

in the presence of:


  
\_\_\_\_\_  
(Signature of witness)

JO-ANNE PYKE  
\_\_\_\_\_  
(Name of witness)

  
\_\_\_\_\_  
(Signature of witness)

Candice Pyke  
\_\_\_\_\_  
(Name of witness)


ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act 2009* on:

  
\_\_\_\_\_  
Steven Robinson  
Executive Director  
Dispute Resolution and Compliance

8 NOVEMBER 2016  
\_\_\_\_\_  
(Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

LISA-MARIE OLIVER  
\_\_\_\_\_  
(Name of Witness)

\_\_\_\_\_

Attachment A – Affected Employees

Attachment A

Employee Name	Classification	Underpayment
[REDACTED]	Food and Beverage Attendant Grade 2	\$4293.74
[REDACTED]	Food and Beverage Attendant Grade 2	\$3341.42
[REDACTED]	Food and Beverage Attendant Grade 2	\$4929.53
[REDACTED]	Food and Beverage Attendant Grade 2	\$4304.11
[REDACTED]	Cook Grade 3	\$3374.17



**Attachment B – Payment Plan**

Payments to commence the week immediately following the commencement date of this Undertaking.

Payments to consist of an initial lump sum payment (Column 'A') spread proportionally amongst the Affected Employees, with the remaining amount (Column 'B') to be paid in 24 equal and consecutive weekly payments as detailed in the table below:

	<b>Column A</b>	<b>Column B</b>
<b>Employee Name</b>	<b>Initial Payment</b>	<b>Weekly payment</b>
[REDACTED]	\$2121.02	\$90.53
[REDACTED]	\$1650.62	\$70.45
[REDACTED]	\$2435.21	\$103.93
[REDACTED]	\$2126.11	\$90.75
[REDACTED]	\$1666.81	\$71.14